

**EDWARD S. MARION**  
**ATTORNEY-AT-LAW, L.L.C.**

PSC REF#:129323

EDWARDMARION@CHARTER.NET • (608) 334-9741  
716 OTTAWA TRAIL, MADISON, WI 53711

Public Service Commission of Wisconsin  
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April 1, 2010

Sandra J. Paske  
Secretary to the Commission  
Public Service Commission of Wisconsin  
610 N. Whitney Way  
Madison, Wisconsin 53707-7854

VIA: ERF

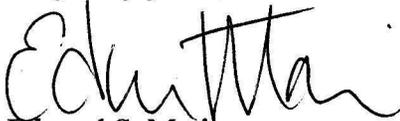
Re: Ann Wirtz and Jason Wirtz v. Invenergy LLC, Docket No. (To be assigned)

Dear Ms. Paske:

Filed herewith, is the Verified Complaint of Ann Wirtz and Jason Wirtz.

Thank you very much.

Very truly yours,



Edward S. Marion

cc (Via Email): Attorney Peter Gardon  
Attorney Will Borders  
Ann Wirtz  
Jason Wirtz



**BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN**

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**ANN WIRTZ and JASON WIRTZ,  
Complainants**

**v.**

**Docket No.**

**Invenergy LLC  
Respondent**

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**VERIFIED COMPLAINT**

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Ann Wirtz and Jason Wirtz, 324 Oakview Circle, Oakfield, WI, on behalf of themselves and their children, Joshua, Kayla, Annalise, and Megan, hereby ask the Commission to order Invenergy LLC to compensate them for injuries sustained as a result of the operations of the Forward Wind Energy Center (the "FWEC").

The Commission has jurisdiction to grant this relief in a new docket, as captioned above, or in one or both of the following previously-opened dockets:

*Application of Forward Energy LLC for a Certificate of Public Convenience and Necessity to Construct a Wind Electric Generation Facility and Associated High Voltage Electric Transmission Facilities, to be Located in Dodge and Fond du Lac Counties, 9300-CE-100;*

*Application of Ledge Wind Energy, LLC for a Certificate of Public Convenience and Necessity to construct a 150 MW Wind Electric Generation Facility and Associated Transmission Facilities, to be Located in the Towns of Morrison, Holland, Wrightstown and Glenmore, Brown County, Wisconsin; 9554-CE-100*

The Commission has jurisdiction pursuant to Wis. Stats. §§196.02 (1), 196.26, 196.28, 196.39, and 227.42 and Wis. Admin. Code §§ PSC 2.07 and 2.08.

## STATEMENT OF ISSUES

1. Did the operations of the FWEC damage the health of the Wirtz family?
2. Did the operations of the FWEC force the Wirtz family to abandon their home and property, causing them to lose the entire value of that property, the value of their livestock, and to incur other consequential injuries?

## INTRODUCTION

In its decision approving the FWEC, the Commission acknowledged residents' "concerns about adverse impacts from turbine noise." The Commission ordered Invenergy to "work with those residents who testified regarding their particular potential adverse health and safety consequences . . . ." FWEC Decision, PSC REF#: 37618, p. 35. The Commission ordered Invenergy "to the extent practicable to mitigate these effects" for two residents in particular, John Immel and John Panzer. FWEC Decision, p. 35.

At the FWEC hearing, Mr. Immel expressed concern for the health of his wife -- who had "inner ear problems"-- and for the health of his sons --who "suffered from migraines." FWEC transcript, PSC REF#: 36581, p. 713. Mr. Panzer expressed concern about the effects of the project on his pacemaker and about other health problems, including "depression, flicker and vision problems and hearing problems in the area." FWEC transcript, PSC REF#: 36583, p. 888.

The injuries sustained by the Wirtzes are just as great as the injuries anticipated by Mr. Immel and Mr. Panzer. The Commission found their injuries would constitute individual hardships and ordered Invenergy to mitigate the effects to their health. The Wirtzes are exactly similarly situated. The Commission, therefore, should require Invenergy to remedy the effects to them.

## STATEMENT OF FACTS

In 1997, Ann and Jason Wirtz purchased an old country farmhouse, on eight acres of land inside what was to become the footprint of the FWEC. Being an old farmhouse, the house needed a substantial amount of work, and so, for more than a decade, the Wirtzes spent a substantial sum of money bringing the house up to date. They buried barn ruins that had lain charred for years. They took down old buildings and repaired others. They dismantled three old silos. They replaced the siding and windows.

In 2002, the Wirtzes started a business breeding alpacas. They started with two animals. Eventually, the herd would number ten. The animals were easy to care for. They were docile and healthy. Breeding was never a problem.

When the Wirtzes first heard about the proposed FWEC, they were not concerned. As construction progressed, and as they learned more about the project, they started to worry. In the summer of 2006, they decided to sell their home. At first, they tried to sell by themselves. Later, they listed the property with a realtor. They had the property appraised. The appraiser valued the property at \$320,000. A number of people expressed interest in the property. When, however, they learned about the FWEC, and saw the construction, they were no longer interested. The Wirtzes decided to switch realtors. Because of the FWEC, some realtors refused to list the home. One realtor told them he would have to list it for "well under" \$200,000 --it was appraised for \$320,000-- in order to generate any interest at all. They found a second realtor willing to list the home. It still failed to sell. In 2007, the Wirtzes took their home off the market, because nobody was looking at it.

As soon as the turbines began operating, Ann and the children began to have trouble sleeping. They were tired all the time. They suffered from frequent headaches. The noise got so bad in the bedroom that Ann was forced to sleep on a couch in the living room. A fan and a pellet stove helped partially mask the noise. Megan developed serious stomach and intestinal problems in addition to chronic fatigue and headaches. Ann and Jason both became anxious and depressed.

In addition to affecting the Wirtzes, the turbines began to affect the alpacas. The Wirtzes housed their alpacas in a metal pole-shed. The turbines caused the metal to vibrate. The noise echoed through the shed like the sound of jet engines. Baby alpacas had always come full term. After the FWEC began operating, two baby alpacas aborted and one was stillborn.

In September 2009, no longer able to put up with the noise, which was making them sick, the Wirtzes walked away from their home. The Wirtzes filed for bankruptcy in September 2009. Under the bankruptcy laws, they had the right to keep their home. They had the money to pay their mortgage and other house-related expenses. Nevertheless, they abandoned their home to foreclosure solely as a result of their inability to tolerate the wind turbines.<sup>1</sup> As a result of having to move out of the country and into the village, they were forced to give up their alpaca herd.

## **REASONS WHY THE COMMISSION SHOULD ACCEPT JURISDICTION AND ORDER A HEARING**

### **I. THE COMMISSION HAS ACKNOWLEDGED THE POTENTIAL ADVERSE HEALTH EFFECTS OF WIND TURBINE NOISE AND ACTED TO PROTECT PERSONS LIVING WITHIN WIND ELECTRIC GENERATING FACILITIES.**

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<sup>1</sup> Keeping the home even if they lived elsewhere was not an option because they could not afford to pay for two houses.

In its decision in the FWEC docket, the Commission approved a noise limit of 50dBA during the day and 50dBA at night. PSC REF#: 126124, p. 50. The only evidence supporting these limits is no longer probative. The limits were based solely on the terms of a county ordinance and U.S. EPA guidelines. The court of appeals has since invalidated county wind siting ordinances. *Ecker Brothers v. Calumet County*, 2007AP2109. The EPA guidelines were over 30-years old at the time of the FWEC decision. The EPA has failed to update its guidelines despite the proliferation of wind electric generating facilities throughout the country.

In the Commission's first discussion of record in docket 6630-CE-302, the Glacier Hills Wind Park ("GHWP") docket, the Commission recognized that the noise from existing wind electric generation facilities particularly and significantly affected some residents of the facilities. Unlike the record in the FWEC docket, the record in the GHWP docket contained a mass of evidence --from both fact and expert witnesses-- on the adverse health effects of wind turbine noise. That evidence included a Minnesota Department of Health study, which concluded:

The most common complaint in various studies of wind turbine effects on people is annoyance or an impact on quality of life. Sleeplessness and headache are the most common health complaints and are highly correlated (but not perfectly correlated) with annoyance complaints. Complaints are more likely when turbines are visible or when shadow flicker occurs. Most available evidence suggests that reported health effects are related to audible low frequency noise. Complaints appear to rise with increasing outside noise levels above 35 dBA.

Exhibit 800, PSC REF#: 121070.<sup>2</sup> The state of Minnesota study is only one of a number of studies and reports proposing a positive correlation between wind turbines and adverse health effects.

With the benefit of the first full record on the issue of noise and health, the Commission in the GHWP docket decided that the 50dBA daytime and 50dBA nighttime limits the Commission had accepted (without the benefit of technical evidence) in the FWEC docket were not appropriate for the GHWP. For GHWP, the Commission reduced the noise limit from the 55dBA daytime and 50dBA nighttime limits to 50dBA daytime and 45dBA nighttime (upon complaint from any resident). Thus, the Commission clearly now recognizes the potential adverse health effects of living inside a wind electric generation facility.

## **II. THE WIRTZES ARE ENTITLED TO BE HEARD IN A NEW CONTESTED CASE DOCKET.**

Wis. Stat. § 227.42 (1) provides:

- Right to hearing. (1)** In addition to any other right provided by law, any person filing a written request with an agency for hearing shall have the right to a hearing which shall be treated as a contested case if:
- (a) A substantial interest of the person is injured in fact or threatened with injury by agency action or inaction;
  - (b) There is no evidence of legislative intent that the interest is not to be protected;
  - (c) The injury to the person requesting a hearing is different in kind or degree from injury to the general public caused by the agency action or inaction; and
  - (d) There is a dispute of material fact.

The health of the Wirtzes and the value of their property are substantial interests, which have been injured by the action of the Commission granting a certificate of public

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<sup>2</sup> In his testimony in the GHWF docket on behalf of Wisconsin Electric Power Company ("WEPCO," Mark Roberts patronizingly dismissed the significance of annoyance as a health condition: "The meaning listeners attribute to the sound influences annoyance, so that, if listeners dislike the noise content, they are annoyed. What is music to one is noise to another." PSC REF#: 121871, p. R1.108. Nobody testified at either the GHWP or FWEC hearings that wind turbine noise was like music.

convenience and necessity ("CPCN") for the FWEC. There is no evidence of legislative intent that these interests are not to be protected. On the contrary, the legislature mandated that a member of the Wind Energy Siting Council, created by 2009 Wisconsin Act 40, have "expertise regarding the health impacts of wind energy systems." Wis. Stat. § 15.797 (1). This is explicit legislative recognition of the fact that wind energy systems have health impacts. It follows that protecting people from those health impacts is a substantial interest deserving of protection.

Because the facts meet the standards of Wis. Stat. § 227.42 (1) for granting a contested case proceeding<sup>3</sup>, the Wirtzes are entitled to a hearing in a new docket.

### **III. THE WIRTZES ARE ENTITLED TO BE HEARD IN THE FWEC DOCKET.**

Because the Wirtzes satisfy the requirements of Wis. Stat. § 227.42 (1), the Commission is obligated to conduct a contested case and provide the Wirtzes a hearing on their claims. Alternatively, the Wirtzes are entitled to intervene in the FWEC docket and proceed to a hearing therein.

#### **A. The Wirtzes may intervene in the FWEC docket as a matter of right.**

Any person may intervene in a docket as a matter of right if his or her "substantial interest may be affected by the commission's action or inaction in a proceeding . . . ." Wis. Admin. Code § PSC 2.21 (1). Mitigation of individual hardships is an issue in a proceeding for a CPCN. Wis. Stat. § 196.491 (3) (d) 3. The Commission ordered Invenergy to "work with those residents who testified regarding their particular potential adverse health and safety consequences . . .". FWEC Decision, pp. 35 and 46. The Wirtzes complained to a representative of Invenergy (Laura Miner), but Invenergy failed

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<sup>3</sup> Whether the Wirtzes satisfy the remaining two standards should not be an issue.

to do anything. The Commission has not closed the FWEC docket and continues to require Invenergy to file proof of its compliance with the Commission's decision. FWEC Decision, p. 46, ERF docket sheet in 9300-CE-100. The Wirtzes' substantial interests in the preservation of their health and the value of their property would be negatively affected were the Commission to allow Invenergy to continue to operate the FWEC without remedying the injuries inflicted upon them. Therefore, the Wirtzes have the right to be heard in the FWEC docket.

**B. If the Commission does not allow the Wirtzes to intervene as a matter of right, the Commission should allow permissive intervention.**

Commission rules allow permissive intervention in a docket if a "person's participation likely will promote the proper disposition of the issues to be determined in the proceeding or docket and if the person's participation will not impede the timely completion of the proceeding or docket." Wis. Admin. Code § PSC 2.21 (2). The Wirtzes' participation in the FWEC docket would promote the proper disposition of the issue of Invenergy's compliance with the Commission's requirement that the company work with residents suffering from noise and mitigate those effects by offering evidence of the effects upon them. Since the only issues remaining in the FWEC docket relate to compliance, participation by the Wirtzes will not impede the eventual completion of the docket.

**IV. THE WIRTZES ARE ENTITLED TO BE HEARD IN THE LEDGE WIND DOCKET.**

In the Ledge Wind docket, 9554-CE-100, Invenergy seeks authority to construct another large-scale wind electric generating facility. The Commission may not grant that authority unless Invenergy proves that the proposed Ledge Wind facility is "in the public

interest considering . . . individual hardships . . ." Wis. Stat. § 196.491 (3)(d) 3.

Invenergy can not meet its burden of proof unless, at a minimum, it satisfies the Commission that it has fairly treated the Wirtzes and other similarly situated residents of the FWEC. Therefore, the Commission could properly grant the Wirtzes a hearing on their claim for compensation in the context of the Ledge Wind proceeding.

According to Invenergy's application for Ledge Wind: "The project will require construction of up to 100 wind turbines that will have a capacity of up to 150MW of electric power. The project area boundary encompasses approximately 47,500 acres located in a predominantly agricultural setting." PSC. REF#: 122464. The project would affect 460 property owners. PSC REF#: 122524.

The Commission will have to very seriously question whether Ledge Wind is in the public interest given the entirely foreseeable hardships to so many people inside so large a facility. Participation by the Wirtzes would assist the Commission in that task.

### **SUMMARY AND CONCLUSION**

The operations of the FWEC damaged the health of the Wirtzes while they lived within the facility, and ultimately forced them out of their home, causing them to lose the value of their home and livestock. For these reasons, the Commission should require Invenergy to compensate the Wirtzes for this lost value; for the hardships inflicted upon them while they lived in the project; and for consequential damages, including lost wages and medical expenses, after a hearing in a new contested case docket, the FWEC docket, or the Ledge Wind docket.

Respectfully submitted, April 1, 2010.

**ANN WIRTZ AND JASON WIRTZ**

By /s/ *Edward S. Marion*

Edward S. Marion  
Attorney-at-Law, L.L.C.

716 Ottawa Trail  
Madison, WI 53711  
(608) 334-9741  
marionllc@me.com



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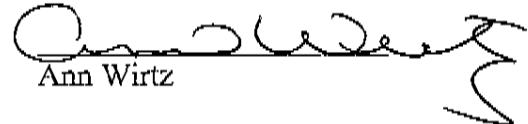
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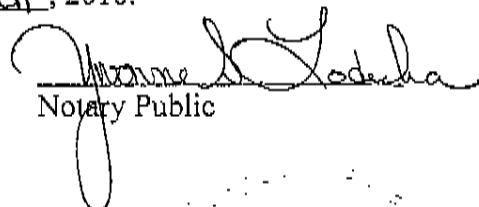
**VERIFICATION**

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Ann Wirtz verifies under oath that the facts alleged in the foregoing Complaint  
are true.

  
Ann Wirtz

Subscribed and sworn to before me this 31<sup>st</sup> day of March, 2010.

  
Notary Public

My commission expires: 6-16-13



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PUBLIC SERVICE COMMISSION OF WISCONSIN

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**ANN WIRTZ and JASON WIRTZ,**  
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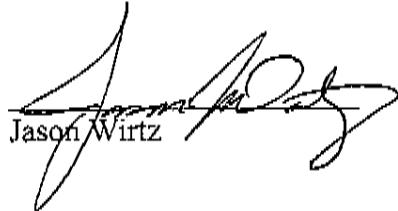
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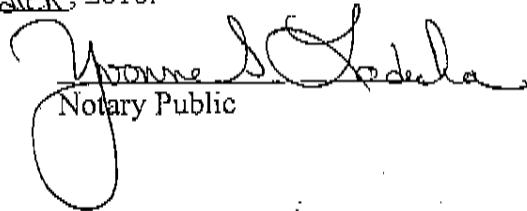
**VERIFICATION**

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Jason Wirtz verifies under oath that the facts alleged in the foregoing Complaint are true.

  
Jason Wirtz

Subscribed and sworn to before me this 31<sup>st</sup> day of March, 2010.

  
Notary Public

My commission expires: 6-16-13

